

08/23/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF : FISHER, Hugh
SERIAL NO. : 10/566,925
FILED : February 5, 2007
EXAMINER : GITLIN, Matthew
ART UNIT : 3635
CONFIRMATION NO. : 1156
TITLE : **BUILDING ELEMENTS**
ATTORNEY DOCKET NO. : 28125-4

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO FINAL OFFICE ACTION

Dear Sir:

In response to the Final Office Action dated June 17, 2010 issued in connection with the above-referenced patent application (“subject application”), Applicant submits the following **Remarks** that begin on page 2 of this paper.

The three-month shortened statutory period for replying to this Office Action expires on September 17, 2010. Accordingly, this Amendment is timely filed.

REMARKS

Status of Claims

The subject application was originally filed with 37 claims. Claims 1–37 were amended by a preliminary amendment. Claims 11–37 were previously withdrawn as directed to non-elected species. Applicant amended claims 1, 6, and 7, cancelled claims 8, 9, and 11–37, and added new claims 38–43 in a previous Amendment. Claims 1–7, 10, and 38–43 remain pending.

Summary of the Office Action

In the Office Action dated June 17, 2010, the Office:

1. withdrew its previous rejection under 35 U.S.C. § 112, ¶ 2; and
2. rejected claims 1–7, 10 and 38–43 under 35 U.S.C. § 103(a) as being anticipated by U.S. Patent No. 3,368,316 issued to W.E. Crowder (“Crowder”).

Rejections Under 35 U.S.C. § 103(a)

The Office rejected claims 1–7, 10, and 38–43 under 35 U.S.C. § 103(a) as being unpatentable over Crowder.

As Applicant stated in its previous response, Crowder discloses children’s building blocks intended to be formed from a cardboard-like material and having interlocking means “readily being disengageable to permit the restoration of the block to *flat, unfolded position* for storage and the like.” (Col. 2, lines 21–23, emphasis added.) In other words, the Crowder building blocks are temporary structures and each block can be easily unfolded back to its flat position for storage. Manufacturing these blocks from sheet metal would prevent the blocks from being readily disengageable, which is the entire purpose of the invention of Crowder.

Claim 1, as previously presented, states that “the blank is formed from sheet metal,” which means that the locking tabs and flange portions which contain the corresponding lock

apertures are also made from sheet metal. In contrast to cardboard-like material, sheet metal has a higher structural rigidity. As one of ordinary skill in the art would understand, once sheet metal locking tabs are passed through the corresponding locking apertures and folded to lock the block in shape, a large amount of force is required to unfold the tabs and disassemble the block. Consequently, forming the readily disengageable blocks of Crowder from metal would make the blocks a lot more difficult to disassemble.

Thus, the skilled person reading Crowder would appreciate that to form the blocks out of sheet metal would be removing a key feature which gives the Crowder blocks their ease of assembly and disassembly. The modification proposed by the Office is therefore improper, because a “proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference.” MPEP § 2145 (*citing* MPEP § 2143.01.)

CONCLUSION

With the above amendments, the Application is now in condition for examination and allowance on the merits. Applicants appreciate the Examiner's attention to this matter. While no additional fees are believed necessary, the Commissioner is authorized to charge any needed fees or credit any overpayments to Deposit Account No. 02-2051 referencing Attorney Docket Number 28125-4.

Respectfully submitted,

Dated: August 17, 2010

/Bryan J. Jaketic/

Bryan J. Jaketic
Reg. No. 56,280
Attorney for Applicant

**BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP**
200 Public Square, Suite 2300
Cleveland, OH 44114-2378
(216) 363-4478